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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,925	07/23/2001	Ashar Aziz	55218-0511	4906
7590	01/27/2005			EXAMINER
Hickman Palermo Truong & Becker 1600 Willow Street San Jose, CA 95125-5106				FELTEN, DANIEL S
			ART UNIT	PAPER NUMBER
				3624

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/911,925	AZIZ ET AL.
	Examiner Daniel S Felten	Art Unit 3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 02 November 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-41 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-41 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. Receipt of the Amendment filed November 02, 2004 amending claims 1, 8, 19, 26 and 37-40 have been amended. Hence, claims 1-41 are pending in this application and are presented to be examined upon their merits.

Withdrawal 35 U.S.C. § 101 Rejections

2. Claims 1 and 19 were rejected under 35 U.S.C. § 101 for being directed to non-statutory subject matter. Claims 1, 19, 37 and 38 have been amended herein to recite that the determining of the amount to be billed to the customer is performed in a computer system. In view of the foregoing, the rejection of claims 1 and 19 under 35 U.S.C. § 101 is hereby withdrawn.

Partial-Withdrawal 35 U.S.C. § 112 Rejections

3. Claims 1-41 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The basis for the rejection is that (1) the use of the term "may be" is indefinite in the limitation "may be dynamically selected and de-selected"; (2) the meaning of the term "dynamically" is unclear; (3) the difference between the "usage data" and the "value data" recited in the claims is unclear; and (4) the use of the term "baseline" is unclear. The claims have been amended to address items 1, 2 and 4. Specifically, the term "may be dynamically" has been replaced with "is capable of being". Also, the term "baseline" has

been replaced with "initial." The examiner thanks the applicant for further clarifying the meaning of "usage data". These rejections under 35 U.S.C. § 112 rejections are withdrawn.

However, with regard to "value data" it is respectfully submitted that the claims as filed **DO NOT** sufficiently recite the difference between "usage" and "value". Although the claim "indicates value provided by each resource from the set of one or more resources." What does this word mean the context of this sentence? The word, "value" has many connotations which may change the scope of claim. For example, the word , "value" can have both qualitative (something intrinsically desirable, good or important) and quantitative meanings (something calculable, measurable —i.e, money or barter). The applicant's definition is not clear in this regard. Thus in view of the foregoing, the rejection of Claims 1-41 under 35 U.S.C. § 112, second paragraph is maintained.

Response to Arguments

4. The applicant has made assertions against the Crooks et al ("Crooks") reference stating that there is no teaching or suggestion in Crooks that the described resources in reference are "capable of being selected and de-selected from the plurality of resources" as required by Claim 1.
1. The applicant is respectfully asked to re-read Column 5, lines 1-27, particularly lines 6+,

"In other aspects, customers can remotely view resource usage data, via computer in *a number of different formats*. For example, usage data can be viewed for individual facilities, all facilities, or in various defined reporting formats..."

The Examiner has interpreted this passage to suggest that the customer has the ability to select or de-select one or more resources/facilities from a plurality of sources based upon the number of

available formats. Thus the selection/de-selection process of one or more resources by the customer is linked to the selection of one or more facilities via the different formats. Thus the rejection of this limitation is maintained. The rest of applicant arguments regarding Crooks are addressed in the rejections submitted below.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crooks et al (US 5,930,773 hereinafter 773) in view of Crooks et al (US 5,943,656 hereinafter 656).

The teachings of 773 regarding limitations that were not amended so as to change the entire scope of the claim and/or argued against by applicant in the November 02, 2004 Amendment/Remarks have been discussed in the August 26, 2004 Office Action and in aforementioned response to arguments.

Re claim 1:

773 discloses wherein a customer request for downloading information, a file is sent containing the bill date, bill identifier, site identifier, service code, *consumption amount and unit of measurement, dollar amount, tax, and various miscellaneous charges* (see 773, col. 5, ll. 21+). However, 773 fails to disclose that the 773 system is “determining” the amounts to be billed to the customers.

656 determines the amounts to be billed by customers by a consolidation of bills (see 656, col. 6, ll. 9+). Since 773 is concerned with providing data related to charges made to a customer for usage of certain resources which are accessed and downloaded remotely (see 773, Abstract; and col. 5, ll. 21+), it would have been obvious for an artisan at the time of the invention to integrate the consolidation bill feature into 773 because an artisan at the time of the invention of 773 would recognize that such a feature would provide the customer with the ability to electronically pay several bills at the same time from a remote location. Thus the ability of saving time and money (postage mailing) would have been recognized by 773 and have made the integration of the aforementioned feature obvious.

7. Claims 2-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crooks et al (US 5,930,773 hereinafter 773) as modified by in view of Crooks et al (US 5,943,656 hereinafter 656) and applied to claim 1 above, and further in view of Aziz et al (US 6,779,016)

Re claims 2-18:

773 as modified by 656 discloses computerized network systems over the Internet (see 773, figs. 4 & 7, 47, col. 5, ll. 31+; and 656, fig. 4, col. 3, ll. 1+), but fails to disclose a Virtual Server Farm (“VSF”). Aziz discloses a VSF (see Aziz Abstract). In view of Aziz one of ordinary skill in the art at the time of the Crooks invention [773, 656] was made would have recognized and have been familiar with the notoriously old and well known problems of ever changing traffic “capacity” and the need to account for changes in traffic capacity, as enunciated by Aziz (see col. 2, ll. 37+). Therefore, because both 773 and 656 discuss a multi-user system of customers and billers accessing a host computer over the Internet, it would have been obvious for one of ordinary skill in the art to make use of the latest network technology to address the notorious old and well known issues enunciated by Aziz. Thus such a modification would be an obvious extension of the teachings of 773 as modified by 656 to provide readily accessible billing and payment resources and utilities over the network (Internet).

The concept of a “reservation fee” is notoriously old and well known in the art to be used to hold something for a period of time. Therefore Official Notice is taken of a reservation fee since such a fee could be considered an obvious extension to the teachings of 773 as modified by 656 from the perspective of the customer being able to hold certain limited resources for a time before they are put to use. For example, reservation fee could be used for resources of a Pay-per-View or aCable Tv program. Thus the charging of such a fee would be obvious.

Re claims 19-36:

(see explanation of claim 1)

Re claims 37 and 38:

(see explanation of claim 1).

Re claims 39-41:

(see explanation for claim 1)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S Felten whose telephone number is (703) 305-0724. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel S Felten
Examiner
Art Unit 3624


DSF
January 13, 2005

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